

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DAVID E. BOWERS, JR.,

Plaintiff,

v.

Case No. 08-C-888

MARK J. MCGINNIS, et al.

Defendants.

ORDER DENYING IN FORMA PAUPERIS ON APPEAL

The pro se plaintiff, a state prisoner at all relevant times, brought a civil action in this court under 42 U.S.C. § 1983, alleging that his civil rights were violated. On October 27, 2008, the plaintiff was granted leave to proceed *in forma pauperis*. By virtue of that same order, I dismissed plaintiff's case for failure to state a claim upon which relief may be granted and because his complaint was frivolous. On that same day judgment was entered dismissing the action. Plaintiff then filed a notice of appeal on November 18, 2008, and currently before the court is the plaintiff's request for leave to proceed *in forma pauperis* on appeal.

Under the PLRA, a prisoner must pay the applicable filing fees in full for a civil action. 28 U.S.C. § 1915(b). If a prisoner does not have the money to pay the \$455.00 filing fee in advance for an appeal, he or she can request leave to proceed *in forma pauperis*.

A plaintiff who was allowed to proceed *in forma pauperis* in the district court does not ordinarily need to provide reasons for an appeal. *Celske v. Edwards*, 164 F.3d 396, 398 (7th Cir.

1999). However, when *in forma pauperis* status has been denied, the appellant must file a motion that "states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a)(1)(C).

There are three grounds for denying *in forma pauperis* status to a prisoner appellant: the prisoner has not established indigence, the appeal is in bad faith, or the prisoner has three strikes. See 28 U.S.C. §§ 1915(a)(2)-(3), (g).

A district court should not apply an inappropriately high standard when making a good faith determination. *Pate v. Stevens*, 163 F.3d 437, 439 (7th Cir. 1998). An appeal taken in "good faith" is one that seeks review of any issue that is not frivolous, meaning that it involves "legal points arguable on their merits." *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983) (quoting *Anders v. California*, 386 U.S. 738 (1967)); see also *Coppedge v. United States*, 369 U.S. 438, 445 (1962). On the other hand, an appeal taken in bad faith is one that is based on a frivolous claim, that is, a claim that no reasonable person could suppose has any merit. *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000).

In considering the plaintiff's request to proceed *in forma pauperis* before the district court, it was determined that the plaintiff met the indigence requirement of 28 U.S.C. § 1915(a)(1). I did determine, however, that his complaint was frivolous. In my order dismissing the claims on October 27, 2008, I certified that any appeal from the order would not be taken in good faith unless Bowers offered bonafide arguments in support of his appeal. (Doc. # 3 at 6.) Bowers has not offered any such arguments in his appeal. As a result, plaintiff's appeal is not taken in good faith. Thus, I will deny the plaintiff's request to proceed *in forma pauperis* on appeal.

IT IS THEREFORE ORDERED that the plaintiff's request to proceed *in forma pauperis* on appeal is hereby **DENIED**, because this court determines that this appeal has not been taken in good faith.

IT IS FURTHER ORDERED that should plaintiff wish to appeal this order that he do so by renewing his motion to proceed *in forma pauperis* with United States Court of Appeals for the Seventh Circuit within 30 days of the date of this order.

IT IS FURTHER ORDERED that copies of this order be sent to the warden of the institution where the plaintiff is confined, and to Corey Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin 53707-7857, and to PLRA Attorney, United States Court of Appeals for the Seventh Circuit, 219 S. Dearborn Street, Rm. 2722, Chicago, Illinois 60604.

Dated this 17th day of December, 2008.

s/ William C. Griesbach
William C. Griesbach
United States District Judge